

ATTACHMENT N

***River Alliance of Wisconsin. Caught in a Cross Current: The
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June 2004.***

Executive Summary and Introduction



**A Policy Report by the River Alliance of Wisconsin
June 2004**

EXECUTIVE SUMMARY

This River Alliance of Wisconsin report launches an effort to design a blueprint for citizen and governmental participation in managing our waters. As a first step, this report assesses the state of the management of our rivers by the agency primarily responsible for that job—the Wisconsin Department of Natural Resources—and it identifies both successes and gaps in that management.

The River Alliance plans to give concerted effort in the next year to a small number of critical “high-leverage” issues—highlighted in this executive summary—that offer an opportunity to shape and direct river management policy. That concerted effort means bringing together interested stakeholders—state resource officials, river advocates, scientists and others—to explore issues, develop policy ideas, and implement solutions.

In the context of recent cuts to the DNR’s budget and vigorous attacks on the state’s environmental laws, we want this report to be a tool for focusing and mobilizing water policy reform efforts, because it’s clear that Wisconsin still has a long way to go to clean up its waters.

More than three decades after enacting the state’s pollution discharge elimination law, Wisconsin’s goal to “eliminate the discharge of pollutants into the waters of the state by 1985” is far from realized. According to the U.S. Environmental Protection Agency’s 2003 Toxic Release Inventory, Wisconsin businesses reported discharging more than four million pounds of toxic substances into our surface waters.

Among the report’s highest priority recommendations is that the DNR accept assistance from citizens to take a fresh look at its existing water-related responsibilities and powers, particularly those under the constitutional Public Trust Doctrine—the vital legal principle that the waters of Wisconsin belong to the people of Wisconsin—in conjunction with the constitutional “right to fish” ratified in 2003.

A second high priority recommendation is the organization within the DNR of a distinct rivers program similar to the well-established lakes program. At present, the management of rivers is fragmented, and river-related duties are generally add-ons to employees’ existing duties. An integrated river management program spanning several sections within the DNR’s current structure would result in an agency that protects aspects of the ecosystem that may fall through the cracks, such as headwaters, which the River Alliance proposes as a subprogram of a rivers program.

Much of the report focuses on two sets of challenges—as does the remainder of this executive summary. One set consists of the many individual resource issues in the water and on the land. The other set consists of institutional difficulties within the DNR itself. The report offers numerous recommendations to address these resource and institutional challenges. Examples of these recommendations are interspersed throughout the remainder of this executive summary.

A TOP THREAT: DEVELOPMENT CHANGING THE LANDSCAPE

Key points:

- Development is one of the top two threats facing Wisconsin rivers and is impacting them on a macro scale.
- The DNR is supposed to uphold the Public Trust Doctrine but it is often undermined in its mission by hundreds of individual decisions by numerous local governments.
- Despite pressure from property rights advocates, proposed DNR options for stronger shoreland zoning received considerable support from the public.

Recommendations include:

- The DNR should engage local governments in at least one watershed—and we suggest the Milwaukee River Basin—about the prospects for developing a “watershed authority.” This would be a locally led and directed regulatory entity that would be able to sidestep the multiple city, village, town and county governments that fragment river management in the watershed.
- The legislature should reinstate the requirement that cities and villages adopt conservation subdivision ordinances and add a specification that established “low impact development” principles be incorporated.

A TOP THREAT: POLLUTED RUNOFF

Key points:

- Polluted runoff is one of the top two threats facing Wisconsin rivers, along with development, as identified by water experts we interviewed.
- The entire package of runoff rules approved in 2002 may be hollow in the absence of a programmatic framework and implementation funds for cost-sharing.

Recommendations include:

- Under the state's relatively new polluted runoff rules, which require at least 70% cost-sharing from the state for any requirement made of a landowner, it should be possible to require no-cost or low-cost “best management practices” regardless of whether funding for cost-sharing is available.
- Change Wisconsin's current tax law so that soil and water conservation plan compliance is required for a farmer to continue to take advantage of the relatively new “Use Value Assessment” law.

STRIDES STALLED? POINT SOURCE POLLUTION

Key points:

- The Wisconsin Pollution Discharge Elimination System (WPDES) program has controlled point source pollution but has not met the statutory goal of eliminating it.
- Budget cuts may be pushing the DNR to focus more on merely processing permits rather than analyzing applications for acceptability.
- The DNR has no direct enforcement authority over discharge permits.
- Municipal facilities may face tougher scrutiny than industrial facilities.

Recommendations include:

- The DNR should consistently add conditions to industrial permit renewals that would ratchet down discharges and eliminate them on specified timetables, thus meeting the intent of a longstanding Wisconsin law “to eliminate the discharge of pollutants into the waters of the state by 1985.”
- The DNR should be given direct enforcement authority over lesser permit violations, rather than having to refer all enforcement cases to the state's Department of Justice.

STRIDES BUT STRUGGLES STILL: BLOCKAGE AND DAMAGE BY DAMS

Key points:

- Wisconsin leads the nation in dam removal.
- Dams fragment river ecosystems, degrade water quality, are expensive to repair and maintain, and typically become unsafe over time.
- Dam management and inspection should be prioritized based on both safety and ecological considerations.
- There is too little money available for dam inspection and removal.
- DNR can regulate the impact of FERC-licensed dams during relicensing under Section 401 of the Clean Water Act.

Recommendations include:

- The DNR should rate dams in terms of their ecological impact on rivers and use these ratings as an additional framework, secondary to safety considerations, for prioritizing dam inspections and management.

STRIDES IN 2004: GRAPPLING OVER GROUNDWATER

Key points:

- Groundwater is a major feeder to Wisconsin's rivers but concentrated pumping can reduce their flows.
- The high-capacity well law in place in Wisconsin until 2003 did not adequately protect groundwater.
- In 2004, a new Groundwater Protection Act was signed into law.
- Through 2007, lingering issues will be addressed by a Groundwater Advisory Committee.

Recommendations include:

- To encourage groundwater conservation, the state government should undertake a study of other states' alternative water utility rate designs.

AN INTENSIFYING CHALLENGE: ROARING RECREATION

Key points:

- The number of boats in Wisconsin has tripled and the size of boat motors has doubled over the last thirty years.
- At high speeds close to land, the wakes of boats and personal watercraft can rip up shorelines and contribute to bank erosion.
- On average, at least one quarter of the fuel used in two stroke engines ends up in the water.
- In response to noise complaints on one flowage, the DNR designated a "voluntary quiet area."

AN INTENSIFYING CHALLENGE: MERCURY'S RISING

Key points:

- One out of every five water experts cited airborne pollutants such as mercury as a top threat to Wisconsin waterways.
- In 2001 the Wisconsin Department of Health and Family Services (DHFS) and the DNR cautioned against eating specific fish species in all Wisconsin waters due to mercury contamination.
- The U.S. Environmental Protection Agency reported in 2004 that nationwide, 630,000 fetuses - nearly twice original estimates - are exposed to unsafe mercury levels each year because of contaminated fish.

AN INTENSIFYING CHALLENGE: ALIEN INVADERS

Key points:

- Invasive species—including fish, plants and invertebrates from outside their native range—wreak havoc upon our rivers by stifling native species, disrupting navigation and recreation, and interfering with water intake structures.
- A governor-appointed invasive species council recently got underway in Wisconsin.

DNR—THE HUB OF WISCONSIN RIVER MANAGEMENT

Key points:

- There is inconsistent communication and cooperation between the DNR's central office and its regional offices.
- The chain of command within the DNR is murky.
- The 1996 reorganization of the DNR had some good goals, but implementation has not lived up to its promise to meaningfully implement a watershed approach.
- The DNR struggles with internal funding priorities and attempts to compensate for budget cuts with high numbers of limited term employees.

Recommendations include:

- The position of DNR Secretary should be an elected, nonpartisan office, akin to the State Superintendent of Public Instruction.

PERMITS AND PERMISSIVENESS

Key points:

- The DNR has been under intense pressure to issue permits quickly.
- Staffing shortages cripple efforts to adequately analyze permit applications.
- Permit monitoring and enforcement are inadequate.

Recommendations include:

- Within a given watershed, the DNR should issue permits based on the cumulative impacts of those permits on waterways rather than issuing each in isolation.

REALITY CHECK: ASSESSING HABITAT AND WATER QUALITY

Key points:

- Comprehensive assessment and monitoring programs are essential to fully implement and enforce existing federal and state water protection regulations.
- Funding and staff for DNR's assessment and monitoring programs have been repeatedly cut.
- Citizens can play a role in alleviating DNR's assessment and monitoring shortfalls.

Recommendations include:

- The DNR should develop a citizen monitoring program that provides written protocols and training to ensure citizen data meets DNR quality assurance protocols.

LAW AND ORDER

Key points:

- A majority of experts agreed that enforcement of water laws is inadequate. A major reason is budget cuts and staff shortages.
- The DNR counts on citizens to report violations; an estimated 80 to 90 percent of enforcement actions result from citizen complaints.
- Many experts think the DNR is reluctant to enforce environmental laws due to political pressure.

DUELS OVER RULES

Key points:

- Of those interviewed, no DNR Division of Water employee in the central office offered a positive assessment of DNR rulemaking.
- The experts interviewed by the River Alliance had more concrete recommendations about DNR rulemaking than they did about any other topic.
- The DNR is overly reliant on advisory committees to help it create or revise rules, often not effectively using its own experts.
- Rulemaking advisory committees are often dominated by the parties the rules are intended to regulate.

A COLLABORATIVE HAND

Key points:

- Major regulatory and policy changes in the near future may dramatically affect DNR's relationships with local governments.
- The DNR increasingly appreciates local river or watershed groups.
- The River Protection Grant Program allows the DNR to get more bang for the buck when it fosters partnerships.

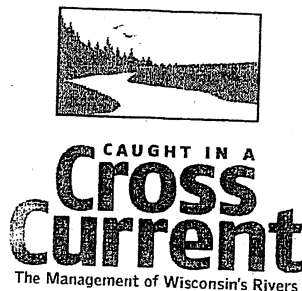
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CAUGHT IN A Cross Current

The Management of Wisconsin's Rivers



A REPORT BY THE RIVER ALLIANCE OF WISCONSIN

The River Alliance of Wisconsin is a nonprofit, nonpartisan group of citizens, organizations and businesses dedicated to advocating for the protection, enhancement and restoration of our rivers and watersheds.

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Cover photo taken by Sym Terhune, June 1991 at La Salle Falls on the Pine River, a State Designated Wild River. Photo courtesy of the Wisconsin Department of Tourism.

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Introduction

"Can we afford clean water? Can we afford rivers and lakes and streams and oceans which continue to make possible life on this planet? Can we afford life itself? Those questions were never asked as we destroyed the waters of our nation, and they deserve no answers as we finally move to restore and renew them. These questions answer themselves."

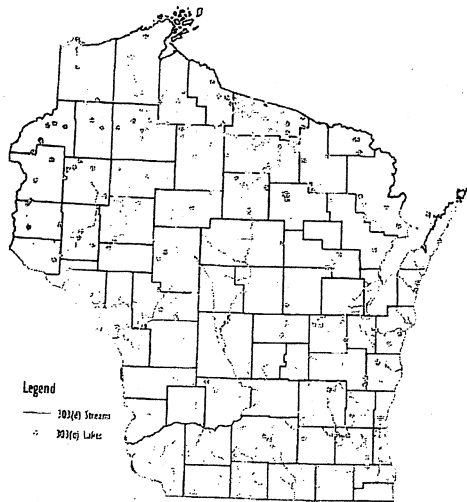
Senator Ed Muskie of Maine arguing for the passage of the Clean Water Act in 1972

The waters of Wisconsin belong to the people of Wisconsin. It stands to reason that the responsibility to protect these waters also lies with the people of Wisconsin. This River Alliance of Wisconsin report launches an effort to design a blueprint for citizen and agency participation in managing our waters. As a first step, this report assesses the state of the management of our rivers by the agency primarily responsible for that job—the Wisconsin Department of Natural Resources—and it identifies both successes and gaps in that management.

But our goal is to do more than analyze or critique. The River Alliance plans to give concerted effort in the next year to a small number of critical "high-leverage" issues (highlighted in the executive summary) that offer an opportunity to shape and direct river management policy. That concerted effort means bringing together interested stakeholders—state resource officials, river advocates, scientists and others—to explore issues, develop policy ideas, and implement solutions. A fresh dialogue about the essentials of water policy was advocated by a diverse committee convened by the Wisconsin Academy of Sciences, Arts, and Letters to produce the 2003 report *Waters of Wisconsin: The Future of our Aquatic Ecosystems and Resources*.¹

In the context of recent cuts to the DNR's budget and a reinvigorated attack on the state's environmental laws, we want this report to be a tool for focusing and mobilizing water policy reform efforts, because it's clear that Wisconsin still has a long way to go to clean up and sustainably manage its waters.

More than three decades after enacting the state's pollution discharge elimination law, Wisconsin's goal to "eliminate the discharge of pollutants into the waters of the state by 1985"² is far from realized. According to the U.S. Environmental Protection Agency's Toxic Release Inventory, in 2001 Wisconsin businesses reported discharging more than four million pounds of toxic substances into our surface waters.³



Wisconsin's Impaired Waters

Source: *Waters of Wisconsin: The Future of Our Aquatic Ecosystems and Resources, 2003*

So Much At Stake

Outdoor recreation and tourism are very important economically to Wisconsin. Tourism is the state's second largest industry, contributing \$11.4 billion to our economy in 2003.⁴ Almost half of our citizens fish, and Wisconsin sells more fishing licenses to out-of-state visitors than all other states except Florida. Fishing, wildlife watching and hunting support more than 110,000 jobs and contribute billions of dollars annually to Wisconsin's economic output.⁵ Nationally, the U.S. Department of Agriculture's Forest Service found that kayaking grew faster in popularity than all other forms of outdoor recreation from the mid-1990s to 2000.⁶ Polluting, altering, or overburdening our rivers and lakes may harm these important recreational and economic activities.

Our waterways continue to be polluted. Evidence is unequivocal:

- In 2002, the DNR proposed to downgrade 94 water bodies from warm water sports fisheries to "limited aquatic life" or "limited forage fish" status, a step in the wrong direction that environmental and conservation groups succeeded in halting.
- Wisconsin is required under Section 303(d) of the federal Clean Water Act to maintain a list of "impaired waters," and the DNR identifies more than 600 water bodies that have not met state water quality standards.⁷ Though the DNR strives to remove waters from this list, some experts project that it could be twice or three times as long if the DNR had an adequately funded assessment program (see page 48).
- In the National Wildlife Federation's 2000 report *Pollution Paralysis II: Code Red for Watersheds*, Wisconsin received an "F" grade for the status of its watershed restoration planning.⁸
- In 2001, the state government advised caution about eating fish caught in **all** Wisconsin waters due to high levels of mercury from coal-burning power plants and other sources that finds its way to waters, then into the flesh of fish. Previously, warnings were provided only for specific lakes and river segments.⁹

Insights Through Interviews

To help assess the status of the management of Wisconsin's rivers, the River Alliance relied primarily on extensive interviews with water experts across the state. Over the years, focused meetings with DNR staff and other water experts have proven to be valuable to the River Alliance. Thus, interviews were chosen as a method for this project to obtain a richness of observation.

Through these interviews the River Alliance aimed to identify the following:

- Current threats or challenges that agency staff and others face in their efforts to implement existing water protection regulations;

- Recent successes and current strengths with regard to the management of rivers; and
- Opportunities for improving how existing policies are implemented and enforced.

Most of these interviews took place in the fall of 2003. The River Alliance used the same set of questions in all interviews, but certain specialists were asked additional questions. The majority of questions used were broad and open-ended, rather than narrowly focused or leading. Interviews tended to last from 45 minutes to an hour although some lasted more than two hours. To foster candor, we promised all interviewees that their identities would not be revealed in the report. All interviewees are referred to as "he" in the text of this report.

The River Alliance interviewed 75 Wisconsin water experts. Forty-nine were working for the DNR at the time, four had recently left the DNR, and the remaining 22 were outside the agency. DNR staff spanned varied positions and levels of responsibility, and included a representative sample of staff in the agency's central office and regional offices.

Organizing the Findings

The water experts interviewed talked so often about the constitutional principle called the "Public Trust Doctrine" that it warranted its own section. It is early in this report because the Doctrine is the foundation for much of DNR's authority. The rest of the report consists of two major sections. The first focuses on resource challenges in the water and on the land. The water experts interviewed identified major challenges (development and polluted runoff), partial successes (pollution from pipes, dam removal, and groundwater), and intensifying challenges (motorized recreation, mercury pollution, and invasive species). This report also covers environmental developments that occurred after the River Alliance's interviews, such as the introduction and approval of the "Job Creation Act," 2003 Wisconsin Act 118 (see page 46). The second section focuses on the administrative challenges such as monitoring, law enforcement, and rulemaking, that make addressing resource issues even more difficult.

Around the Next Bend in the River

This report is the beginning of a more structured dialogue about Wisconsin's rivers. Following up on its findings and recommendations, the River Alliance will work to convene a series of meetings in which conservation organizations and other river partners sit down with DNR administrators and representatives of other government agencies. This dialogue with DNR leaders should be unlike any other involving citizen groups in recent years. The focus will be on some longstanding, untapped potential as well as some new opportunities and tools, such as the constitutional "right to fish" that was ratified in 2003 (see page 7).

Citizen participation will be crucial. Citizens can offer a unique perspective to help the DNR take a fresh look at its existing water-related responsibilities and powers, particularly those under the constitutional Public Trust Doctrine (see page 5), and can help DNR improve methods for education and outreach to the general public.

The River Alliance is also proposing that the DNR organize a rivers program at the agency (see page 44), much like the well-established lakes program. A rivers program would include:

- Making river duties the primary function for some DNR employees, and ensuring that river management functions are not merely add-ons to existing duties.
- Putting river management under one administrative roof and integrating river management across various DNR units.
- Increasing public education about rivers.

The intended result of these meetings between citizen groups and DNR officials is a joint work plan outlining concrete steps to be taken by participants, resources committed by each, an implementation timeline, and benchmarks for evaluating progress. The emphasis will be on practical steps to protect and restore Wisconsin's rivers. Short term success will be measured by how many policy initiatives advance, but the true test will be how these efforts translate into improvements in the health of Wisconsin's rivers.